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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL HERMEN SHERIDAN et al.,

Defendants and Appellants.

B211364

(Los Angeles County  
Super. Ct. No. BA322802)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Michael E. Pastor, Judge. Modified in part; affirmed in part.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant Michael Hermen Sheridan.

Derek K. Kowata, under appointment by the Court of Appeal, for Defendant and Appellant Angela Sheridan.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and Richard S. Moskowitz, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Michael Sheridan was convicted, following a jury trial, of one count of second degree murder in violation of Penal Code section 187, subdivision (a). Appellant Angela Sheridan, Michael's wife, was convicted of involuntary manslaughter in violation of Penal Code section 192, subdivision (b). The trial court sentenced Michael to a term of 15 years to life in state prison and Angela to the mid-term of three years in state prison. Both appellants were ordered to pay direct restitution to the victim's wife.

Appellants appeal from the judgment of conviction. Angela contends that the evidence is insufficient to support her conviction and the trial court erred in instructing the jury on involuntary manslaughter under the natural and probable consequences doctrine and on the doctrine itself. Michael contends that the trial court erred in refusing to instruct the jury that it could convict him of involuntary manslaughter and in modifying two standard instructions on defenses to simple assault and battery. Both appellants contend that the trial court erred in applying a court construction penalty to the court security fee imposed on them. We agree that the construction penalty was not authorized. It is ordered stricken. The judgment of conviction is affirmed in all other respects.

### Facts

On the evening of May 13, 2007, appellants went to Mel's Diner on Highland with a three-year old boy and an older woman. It was Mother's Day. When appellants left the restaurant, Michael paid the parking lot attendant, Carlos Sanchez, for parking. The group went to their car, a white Honda Civic. Angela got into the driver's seat and Michael got into the front passenger seat. The woman and boy sat in the back.

Rod Poole and his wife Lisa Ladaw arrived at the parking lot about this time, and parked their black Honda Civic. As Poole was walking back to the car after paying the parking attendant, Angela backed up her car and hit German Garcia in his left lower back area. Garcia was a busboy at Mel's. Angela rolled down her window, apologized and asked Garcia if he was okay. He replied that he was fine.

Angela continued to back up her car, then shifted and went forward. She almost hit Poole. Poole angrily said: "Watch where you're going. You just hit somebody." Angela appeared upset and cursed Poole. Poole called her a bitch. Poole walked away and rejoined his wife at their car, and the two walked toward the restaurant.

Angela drove forward a short distance, stooped and started to get out of the car. She stopped and said to someone inside the car: "He won't get away with it. He called me a bitch." She then got out of the car and walked toward the front entrance of the restaurant. Michael got out and followed Angela. Angela caught up to Poole and asked several times if he had called her "a motherfucking bitch." Poole agreed that he had, because she was not watching what she was doing and was giving him attitude. Michael did not say anything, but he appeared angry.

Poole's response appeared to anger Angela more. She said, "I could kill you," at least three times. Ladaw tried to defuse the situation by saying that Poole was just trying to tell Angela that she had hit someone. Poole went over to Sanchez. Angela and Michael followed behind him, as did Ladaw. Poole asked Sanchez: "Can you please tell these people what they've done?" Sanchez advised Poole to let it go, walk away and ignore appellants. Sanchez told Angela to watch where she was driving.

At this point, Ladaw was standing by her black Civic and appellants' white Civic, which was blocking her car. She was near Michael, who was standing by the passenger's side of the white Civic. Angela stood by the driver's side. Ladaw tried to calm Angela down, but did not succeed. Angela was angry and yelling.

As Poole started to walk back toward his wife, Angela yelled something like: "I'll kill you. You don't know who you're messing with. You don't know me." She appeared to be very upset. According to Sanchez, Michael appeared to be just watching the situation, and was calm and controlled. He seemed like he was totally in control. When Poole reached his wife, Michael and Poole started exchanging words and Michael "kind of got in his face." Poole kept walking toward the front sidewalk. Michael caught up to Poole just before he got to the sidewalk.

According to Ladaw, Michael said, "Do you know who I am?" He also said: "Why don't you go back to the country you came from?"<sup>1</sup> The two men scuffled. Michael started pushing Poole around. Michael threw the first punch and hit Poole in the stomach. Michael hit Poole in the neck and chest area while Angela watched. Poole started backing up and Angela began hitting him from behind. Both appellants continued to hit Poole as he fell to the ground. Both appellants jumped on top of Poole, but Angela did not stay there. She stood up and punched and kicked Poole in the head and torso. Michael remained crouched over and continued to hit Poole.

Ladaw tried to break up the fight but was shoved to the side. Sanchez and Garcia decided to break up the fight. They ran over to pull appellants off Poole. Michael told Angela to get in the car and "get out of here." Angela complied.

Poole got up and walked toward his wife. When she asked if he was okay, he opened his jacket, revealing that he was bleeding from his torso. Poole said that he did not feel well and collapsed. Ladaw did not realize that Poole had been stabbed until then. Neither Ladaw nor Sanchez saw a knife during the fight.

Sanchez and Garcia later selected appellants' photographs from six-pack photographic line-ups as the couple who attacked Poole.

The attack was caught on a security video and the videotape was played for the jury during trial. Sanchez narrated the tape for the jury.

Poole died from the stab wounds he received during the fight. Dr. Christopher Rogers of the Los Angeles County Coroner's Office, testified that Poole suffered six stab wounds, one each on the right and left front sides of his chest, three going down the left side of his chest and one on the left rear side. One wound involved a puncture of a large vein near the heart and would have been fatal in a few minutes. Three other wounds were lung punctures and were life-threatening. Two wounds were not life-threatening.

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<sup>1</sup> Poole was originally from England.

On May 14, 2007, police searched appellants' residence. They found a large kitchen knife with a fixed wooden handle. One side of the blade had what appeared to be blood stains on it.

Samples from various parts of the knife were sent to Orchid Cellmark lab for DNA testing. The stains on the blade were human blood; the knife blood was an exact match for Poole's blood. DNA on the knife handle matched Michael's DNA. There was another contributor to the DNA on the knife handle, but that DNA could not be identified.

At trial, the People introduced evidence that Michael sent a letter to Angela stating: "I think the longer we delay the case the better. We have got to get our cases separated. We've got to. If it goes really bad in my case, I'm going to try and plead insane. Pretend you know. It could take a while. I would get five to eight years."

Angela and Michael did not testify at trial or call any witnesses to testify on their behalf.

## Discussion

### 1. Sufficiency of the evidence – Angela

Angela contends that there is insufficient evidence to establish that Michael's act of stabbing Poole to death was a natural and probable consequence of the fistfight that she aided and abetted, and that her conviction for involuntary manslaughter violates her federal constitutional right to due process and proof beyond a reasonable doubt.

"A person who knowingly aids and abets criminal conduct is guilty of not only the intended crime [target offense] but also of any other crime the perpetrator actually commits [nontarget offense] that is a natural and probable consequence of the intended crime. The latter question is not whether the aider and abettor *actually* foresaw the additional crime, but whether, judged objectively, it was *reasonably* foreseeable.

[Citations.] Liability, under the natural and probable consequences doctrine 'is measured by whether a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted.' [Citation.]" (*People v. Medina* (2009) 46 Cal.4th 913, 920.)

""A natural and probable consequence is a foreseeable consequence" . . . .'  
[Citation.] But 'to be reasonably foreseeable, "[t]he consequence need not have been a strong probability; a possible consequence which might reasonably have been contemplated is enough. . . ." [Citations.] A reasonably foreseeable consequence is to be evaluated under all the circumstances of the individual case [citation] and is a factual issue to be resolved by the jury. [Citations.]" (*People v. Medina, supra*, 46 Cal.4th at p. 920.) "The precise consequence need not have been foreseen." (*Id.* at p. 927.)

Angela contends that the stabbing in this case was not a foreseeable consequence of the fistfight because the fight was not gang-related and did not stem from any ongoing rivalry involving past acts of violence; there was no evidence to show that she and Michael had any type of agreement or plan to attack Poole; and there was no evidence that she had any prior knowledge that Michael was armed with a knife or that she aided Michael in stabbing Poole with a knife.

Courts of Appeal have upheld convictions under the natural and probable consequences doctrine when one or more of the above-described types of evidence were present. (See, e.g., *People v. Gonzales* (2001) 87 Cal.App.4th 1.) The absence of such evidence is not dispositive and does not mandate reversal. (See *People v. Medina, supra*, 46 Cal.4th at p. 921.) We do not agree with Angela, however, that all of the above evidence is missing.

There is circumstantial evidence from which a jury could reasonably infer that Angela had prior knowledge that Michael was armed. Michael and Angela were married and lived together, and the large kitchen knife he used would be difficult to conceal.<sup>2</sup> Angela's behavior toward Poole was aggressive and fearless. She told him repeatedly that she could kill him and also said: "You don't know who you're messing with." Angela and Michael were both considerably smaller than Poole. It is reasonable to infer

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<sup>2</sup> A photograph of the knife used by Michael shows that the knife was a fairly large kitchen knife. The prosecutor estimated the length of the blade at five inches, without objection from appellants. The wooden handle was a similar size.

that Angela's bravado and aggression showed that she was aware that Michael had a knife which he could use if necessary.

There is also circumstantial evidence from which a jury could reasonably infer that Angela aided Michael in the stabbing. Angela accurately points out that no witnesses saw Michael pull out or use the knife. Angela was much closer to Poole and Michael than the witnesses, however. Sanchez described Angela as watching when Michael threw his first punch. She then came closer and began hitting Poole. Both appellants continued hitting Poole as he stumbled and fell to the ground. At one point, they were both on top of Poole. Angela also punched and kicked Poole from a standing position. The knife used in the stabbing was a fairly large kitchen knife. Michael stabbed Poole six times, covering a wide area of the torso with one stab wound on the left front side of the chest, one on the right front side, three going down his left side and one on the left rear side of his chest. Angela was next to Poole and started her assault very shortly after Michael threw his first punch at Poole. It is more than reasonable to infer from these facts that Angela saw Michael take out his knife and stab Poole.<sup>3</sup> Her continued assault on Poole must, to some degree, have aided Michael, by distracting Poole and making it difficult for him to take evasive or defensive action.

Further, the direct evidence in this case show two of the six factors discussed in *Medina*, which the Court found may constitute sufficient evidence to support an aider and abettor's murder conviction. The committed crime (fatal stabbing) took place while the target crime (battery) was being perpetrated and weapons were introduced to the target crime (battery) shortly after it ensued. (*People v. Medina, supra*, 46 Cal.4th at p. 921.)

Here, Angela threatened to kill Poole. When her husband attacked Poole, Angela joined in almost immediately. It is reasonable to infer that she knew either before or very shortly after joining the fistfight that Michael had a knife. The evidence is sufficient to support a finding that a reasonable person in Angela's position would have or should have

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<sup>3</sup> The contrary inference, that she was unaware of the extensive stabbing, is much less reasonable.

known that a stabbing was a reasonably foreseeable consequence of the battery she aided and abetted. Even if a stabbing were not a strong probability, it was "a possible consequence which might reasonably have been contemplated." That is enough. (See *People v. Medina, supra*, 46 Cal.4th at p. 920.)

## 2. Instructional error - Angela

Appellant contends that the trial court's instruction to the jury on the natural and probable consequences doctrine permitted the jury to convict her of involuntary manslaughter without finding that manslaughter was a natural and probable consequence of the battery she aided and abetted. We do not agree.

"[T]he correctness of the jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction." (*People v. Castillo* (1997) 16 Cal.4th 1009, 1016.)

The trial court instructed the jury as follows:

*"One who aids and abets another in the commission of a 'target' crime or 'target' crimes not only commits that 'target' crime or those 'target crimes,' but also is guilty of any other crime committed by a principal which is a natural and probable consequence of the 'target' crime or crimes originally aided and abetted.*

In order to find a specific defendant guilty of the crime of murder in the second degree as charged in Count 1, or of the lesser included crimes of voluntary manslaughter and/or involuntary manslaughter, based upon this particular theory of 'a natural and probable consequence,' you must be satisfied beyond a reasonable doubt that:

1. The 'target' crime or crimes of assault with a deadly weapon or by means of force likely to produce great bodily injury in violation of Penal Code section 245(a)(1), and/or assault in violation of Penal Code section 240, and/or battery in violation of Penal Code section 242, was or were committed;

2. The specific defendant aided and abetted that 'target' crime or those 'target' crimes;



3. A co-principal in that 'target' crime or those 'target' crimes committed the crime or crimes of murder in the second degree and/or voluntary manslaughter; and

4. The crime or crimes of murder in the second degree, voluntary manslaughter, and/or as to defendant Angela Sheridan only, involuntary manslaughter was or were a natural and probable consequence of the commission of the 'target' crime or crimes of assault with a deadly weapon or by means of force likely to produce great bodily injury in violation of Penal Code section 245(a)(1), and/or assault in violation of Penal Code section 240, and/or battery in violation of Penal Code section 242." (Emphasis added.)

The instruction concluded by stating: "You are not required to agree unanimously as to which originally contemplated 'target' crime or crimes the specific defendant aided and abetted, so long as you are satisfied beyond a reasonable doubt and unanimously agree that *the specific defendant aided and abetted the commission of an identified and defined 'target' crime* and that the crime or crimes of murder in the second degree, and/or voluntary manslaughter, and/or as to defendant Angela Sheridan only, involuntary manslaughter was or were *a natural and probable consequence of the commission of that 'target' crime.*" (Emphasis added.)

Angela contends that because the instruction contained "and/or" language in paragraphs 1 and 4, the instruction permitted the jury to find that she aided and abetted simple assault or battery but not assault with a deadly weapon, Michael committed assault with a deadly weapon, which resulted in the victim's death and the murder or manslaughter was a natural and probable consequence of the assault with a deadly weapon.

We see no reasonable probability or possibility that the jury understood the instruction in the manner suggested by Angela. The first and last paragraphs of the instruction make it very clear that the murder or manslaughter must be a natural and probable consequence of the target crime Angela actually aided and abetted.

Angela predicates her claim of error in part on her belief that the stabbing was not a natural and probable consequence of the crimes of simple assault or battery and in part on her belief that the jury would have convicted her of second degree murder if they had

believed that she aided and abetted an assault with a deadly weapon. As we discuss in section 1, *supra*, the evidence is sufficient to support the involuntary manslaughter conviction. If the jury believed that Angela aided and abetted an assault with a deadly weapon and that murder was the natural and probable consequence of that assault, then the jury *should* have convicted Angela of second degree murder. Assuming for the sake of argument that the jury did have such a belief, the jury might have chosen to convict her of a lesser offense out of a sense of mercy or leniency. (See *People v. Pettaway* (1988) 206 Cal.App.3d 1312, 1324.) Angela may not complain of that.

### 3. Involuntary manslaughter instruction - Angela

Angela contends that the trial court erred in instructing jurors that they could convict her of involuntary manslaughter under the natural and probable consequences doctrine. She claims that there was no evidence to support such an instruction. As we discuss in section 1, *supra*, there is substantial evidence to support Angela's conviction for involuntary manslaughter. The trial court did not err in instructing the jury on that offense.

### 4. Involuntary manslaughter instruction - Michael

Michael contends that the trial court erred in refusing to instruct jurors that they could convict him of involuntary manslaughter. He claims that he was entitled to such an instruction because the jury could have found that Angela was the stabber and he only aided and abetted her.

A trial court has a duty to instruct on lesser-included offenses whenever there is substantial evidence from which a jury could reasonably conclude that the defendant committed the lesser offense. (*People v. Breverman* (1998) 19 Cal.4th 142, 154-155, 159.) We strongly question whether such evidence was present here.

The evidence showed that Michael was the first of the appellants to hit Poole, and was on top of Poole striking at his torso for a longer period than Angela. Angela stood up and kicked Poole while Michael remained on top of Poole, striking at him. There was

nothing to place the knife in Angela's hand. DNA evidence showed that Michael handled the knife. It does not seem reasonable to conclude from this evidence that Michael was aiding and abetting Angela's stabbing of Poole.

Assuming for the sake of argument that the court erred in failing to instruct the jury on involuntary manslaughter as to Michael, we see no reasonable probability or possibility that the error contributed to the verdict. There was only one jury in the trial of this matter. That jury convicted Angela of involuntary manslaughter and Michael of second degree murder. These verdicts unequivocally show that the jury did not find Angela to be the actual stabber.<sup>4</sup> This leaves only Michael as the stabber. Poole was stabbed six times in the chest. One wound punctured the large vein that carries blood to the heart; such a wound causes death within a few minutes. Three other wounds were life-threatening. No reasonable jury could convict a defendant of involuntary manslaughter for such a stabbing.

##### 5. Voluntary manslaughter instruction - Michael

Michael contends that the trial court erred in giving CALJIC Nos. 9.11 and 16.142, as modified. We agree.

The trial court modified CALJIC No. 9.11 by adding the following italicized phrases: *"For purposes of the 'target' crimes of Penal Code sections 240 and 245(a)(1) under the theory of 'a natural and probable consequence,'* no words of abuse, insult or reproach addressed to or said about a person, however insulting or objectionable the words may be, if unaccompanied by any threat or apparent threat of great bodily injury, or any assault upon the person, will justify an assault with a deadly weapon or by any

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<sup>4</sup> We do not agree with Michael that the jury's verdict convicting Angela of involuntary manslaughter shows that the jury believed that Michael did the actual killing without legal malice or intent to kill. An aider and abettor's liability can be derivative of the actual killer's intent. An aider and abettor may also be less culpable than the actual killer, however. (*People v. Woods* (1992) 8 Cal.App.4th 1570, 1585-1588.) The instructions as a whole told the jury that it could convict Angela of involuntary manslaughter if the jury believed that Angela intended only to aid and abet misdemeanor assault or battery.

means of force likely to produce great bodily injury. Words alone do not constitute a defense to *any crime which is based upon the commission of the 'target' crime of assault.*"

The trial court modified CALJIC No. 16.142 by adding the following italicized phrases: "*For purposes of the 'target' crime of battery under the theory of 'a natural and probable consequence,'* neither a provocative act which does not amount to a threat or an attempt to inflict physical injury, nor words alone, regardless how offensive or exasperating, is sufficient to justify the commission of *any crime which is based upon the commission of the 'target' crime of battery.*"

We agree with appellant that the modification of the instruction made the instructions confusing at best. In this case, the crimes of murder and manslaughter were crimes "based upon the commission of the target crimes" of assault, assault with a deadly weapon and battery. It is possible to understand the instructions as stating that words can never be a defense to or justification of murder or manslaughter. That is not the law. Verbal provocation may be sufficient provocation to reduce the offense of murder to manslaughter. (*People v. Le* (2007) 158 Cal.App.4th 516, 526, citing *People v. Valentine* (1946) 28 Cal.2d 121.)

We see no possibility or probability that any error in the above two instructions contributed to the verdict against Michael. As we discuss, *supra*, the jury's verdicts in this case clearly show that they found that Angela did not use the knife to stab Poole. This makes Michael the actual stabber and directly liable for the killing. There was no reason for the jury to consider the natural and probable consequences doctrine.

Further, it is highly doubtful that Poole's "bitch" remark could constitute adequate provocation for voluntary manslaughter. (See, e.g., *People v. Gutierrez* (2009) 45 Cal.4th 789, 826-827 [victim's cursing, scratching and kicking defendant not sufficient provocation]; *People v. Lee* (1999) 20 Cal.4th 47, 59-61 [mere fact of argument not sufficient provocation]; *People v. Manriquez* (2005) 37 Cal.4th 547, 586 [calling defendant a "motherfucker" and challenging him to use a weapon not sufficient provocation].) If the remark could constitute objectively adequate provocation, there is no evidence that Michael was actually provoked by it. Michael did not attack Poole

immediately after Poole called Angela a bitch. At one point thereafter, witnesses described him as appearing calm and controlled. It was only after Poole spoke with the parking attendant and then said something directly to Michael that the fight broke out. There is no evidence as to what Poole said to Michael, and so those words could not be found to constitute objectively adequate provocation.

#### 6. Court construction fee

Appellants contend that the trial court erred in applying a Government Code section 70372 court construction penalty to the Penal Code section 1465.8 court security fee. We agree.<sup>5</sup>

Government Code section 70372, subdivision (a)(1) only applies to fines, penalties or forfeitures. The court security fee is not a fine. (See *People v. Alford* (2007) 42 Cal.4th 749, 757; *People v. Wallace* (2004) 120 Cal.App.4th 867, 876.) The Legislature has not chosen to refer to the court security fee as a penalty. Thus, the state construction penalty which is only added to a fine, penalty or forfeiture does not apply a restitution fine or section 1465.8, subdivision (a)(1) fees. (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1372; *People v. Wallace, supra*, 120 Cal.App.4th at p. 877 [the \$20 court security fee is not a traditional punishment].)

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<sup>5</sup> We agree with appellants that imposition of this penalty constituted an unauthorized sentence which may be corrected on appeal even though appellants did not object to the penalty in the trial court.

We decline Michael's request that we order the same correction to his sentence in Superior Court case number SA047175. That case is not before us on appeal.

Disposition

The court construction penalty imposed on each appellant pursuant to Government Code section 70372 is stricken. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting this change. The judgment is affirmed in all other respects.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.